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A COERCIVE LEAGUE

CONTRARY TO THE TEACHINGS OF AMERICAN HISTORY

BY

THEODORE STANFIELD

NEW YORK

REPRINTED FROM

ADVOCATE OF PEACE

SEPTEMBER-OCTOBER

1920

AMERICAN PEACE SOCIETY

FOUNDED 1828

613-14 COLORADO BUILDING

WASHINGTON, D. C.

1920

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A COERCIVE LEAGUE *

Contrary to the Teachings of American History

By THEODORE STANFIELD

THE LEAGUE OF NATIONS proposes that the body called the Council may coerce member States, by force of arms if necessary, notwithstanding the fact history cries out that every such attempt has failed and caused war.

The men who framed the Constitution of the United States discussed, debated, and discarded this very principle of coercion of States. It was embodied in the Virginia plan. To James Madison the people of the United States are forever indebted for a complete record of the debates. The work of taking down the speeches and performing his other duties almost killed him, but, as he wrote at the time, he "realized the value of such a contribution to the fund of materials for the history of a constitution, on which would be staked the happiness of a young people, great even in its infancy, and possibly the cause of liberty throughout the world." in his record of the debates of the convention, James Madison quotes himself as having said concerning the Virginia plan on June 19, 1787:

The coercion on which the efficacy of the plan depends can never be exerted but on themselves (referring to the States). The larger States will be impregnable, the smaller only can feel the vengeance of it. He illustrated the position by the history of the Amphictyonic Confederates and the ban of the German Empire. It was the cobweb which could entangle the weak, but would be the sport of the strong.

Again, on July 14, 1787, he stated:

The practicability of making laws, with coercive sanction, for the States as political bodies has been exploded on all hands.

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* Reprinted from *New York Tribune* of October 14, 1920, with the consent of the author, who has added a number of paragraphs for this pamphlet.

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CANNOT COERCE STATES

Alexander Hamilton said:

To coerce the States would be one of the maddest projects ever devised. No State would ever suffer itself to be used as an instrument of coercing another. . . . There could be no cure for this great evil but to enable the national laws to operate on individuals, like the laws of the States.

Again:

The fundamental principle of the old confederation is defective; we must totally eradicate and discard this principle (coercion of States) before we can expect an efficient government. The gentlemen who have spoken today have taken up the subject of the ancient confederacies, but their view of them has been extremely partial and erroneous. The fact is that the same false and impracticable principle ran through the ancient governments. The first of these governments we read of was the Amphictyonic Confederacy. The council which managed the affairs of this league possessed powers of a similar complexion to those of our present Congress. The same feeble mode of legislation in the heads and the same powers of resistance in the members prevailed. When a requisition was made it rarely met a compliance and a civil war was the consequence. Those that were attacked called in foreign aid to protect them; and the ambitious Philip, under the mask of an ally to one, invaded the liberties of each and finally subverted the whole.

In *The Federalist,* written by Alexander Hamilton, James Madison, and John Jay, the principle of coercion of States is fully treated. The history of its invariable failure in the past, its failure in their own experience in the confederation of the United States, and its necessary and inevitable failure in the future are expounded in decisive fashion.

THE AMERICAN PRINCIPLE

Alexander Hamilton, in one article, stated and proved that "the great and radical vice in the construction of the confederation is in the principle of legislation for States or governments in their corporate or collective

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capacities as distinguished from the individuals of which they exist."

In another issue he wrote:

> Whoever considers the opulence and strength of several of these States, single at the present juncture, and looks forward to what they will become, even at the distance of half a century, will at once dismiss as idle and visionary any scheme which aims at regulating their movements by laws to operate upon them in their collective capacities, and to be executed by coercion applicable to them in the same capacities.
>
> Even in those confederacies which have been composed of members smaller than many of our counties, the principle of legislation for sovereign States supported by military coercion, has never been found effectual. It has rarely been attempted to be employed but against the weaker members; and in most instances attempts to coerce the refractory and disobedient have been the signals of bloody wars, in which one half of the confederacy has displayed its banners against the other half.

In brief, the old reactionary principle is that of the coercion by a collection of States of any disobedient State, while the progressive American principle is that of coercion not of States, but of individuals. The one disregards the traditions, laws, and experience of history, and that of our own great and successful country in particular; the other would take such steps forward as will not prevent in the future a federation of the peoples of the entire world.

It is obvious that coercion of States by other States, in the light of our own national experience and that of the previous attempts of history, proves that such coercion results only in failure. Powerful States in such unions have used coercion against the weak States, but the protection of the weak has not been insured because of the indifference of the strong. The recent Polish incident is an illustration of this fact.

ECONOMIC PRESSURE

The application of economic pressure would also be unjust and ineffective. Russia has been under economic

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pressure for several years; yet, being economically independent, her military power, though impaired, is still of sufficient strength to threaten the safety of Europe, and it required herculean efforts on the part of heroic Poland to defend herself. Attempted economic coercion exerted against the British Empire would be futile, as it is economically independent. Such coercion against the United States would only serve to strengthen our conviction in the cause which we were sustaining. Dependence upon economic pressure against economically independent States is obviously ineffective and would inflict punishment upon the innocent States as well as offending States. Economic pressure upon small States, on the other hand, would place in the hands of strong States a weapon of autocratic coercion which would surely work contrary to the principle of justice.

There remains the principle of securing world peace by a government of laws instead of a world government by coercion. Arbitration has not sufficed. Charles Seignobos, the eminent French authority, in *The New Europe,* November 14, 1918, wrote:

> **But arbitration, far from being a rough sketch of justice, is the negation of justice between nations. It presupposes that all differences can be adjusted within the framework of a lawsuit, and that the parties at variance stand upon the same level morally. It declares in advance that it is powerless to redress any violation of the law, since it does not even admit that the State can be considered guilty of a crime, and hence it places the criminal and the victim upon the same level. . . . To discuss with the brigand the amount of the ransom which he is to exact is not enlarging the domain of justice; it is giving a fresh sanction to brigandage.**

A WORLD SUPREME COURT

The world court, on the other hand, is to operate upon basic principles of law and justice. International laws of justice, universally accepted, respected, and cherished by mankind, will serve as a world code to govern the decisions of the judges.

Upon what means can such a court rely to enforce its decisions? What evidence does our own history offer

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that sovereign bodies can be depended upon to settle their difficulties amicably in accordance with a court which bases its decisions upon justice, but has no coercive power over the sovereign bodies to enforce its decisions?

Oliver Ellsworth, one of the framers of the Constitution and subsequently Chief Justice of the Supreme Court of the United States, expressed himself in the convention of Connecticut for the ratification of the Constitution as follows:

> This Constitution defines the extent of the powers of the General Government. If the general legislature should at any time overleap their limits, the judicial department is a constitutional check. If the United States go beyond their powers, if they make a law which the Constitution does not authorize, it is void; and the judicial power, the national judges, who, to secure their impartiality, are to be made independent, will declare it to be void. On the other hand, if the States go beyond their limits, if they make a law which is a usurpation upon the Federal Government, the law is void; and upright, independent judges will declare it to be so. Still, however, if the United States and the individual States quarrel, if they want to fight, they may do it, and no frame of government can possibly prevent it. . . .
>
> Hence we see how necessary for the Union is a coercive principle. No man pretends the contrary; we all see and feel this necessity. The only question is, Shall it be a coercion of law or a coercion of arms? There is no other possible alternative. Where will those who oppose a coercion of law come out? Where will they end? A necessary consequence of their principles is a war of the States one against the other. I am for coercion by law—*that coercion which acts only upon individuals.* This Constitution does not attempt to coerce sovereign bodies, States, in their political capacity. No coercion is applicable to such bodies but that of an armed force. If we should attempt to execute the laws of the Union by sending an armed force against a delinquent State, it would involve the good and bad, the innocent and guilty in the same calamity.
>
> But this legal coercion singles out the guilty individual, and punishes him for breaking the laws of the Union. All men will see the reasonableness of this; they will acquiesce, and say, Let the guilty suffer.

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The Constitution explicitly recognized the sovereignty of our States. It provided for a Supreme Court which could interpret the national laws and render decisions against individuals and enforce them by means of statutes which provided for the punishment of individuals. But it has no power over the States as sovereign bodies. In 1861 individuals resisted the National Government; strictly, no State as such did so.

Yet thirty-one States have been heard as plaintiffs or defendants before this court. Eighty-odd decisions involving States have been made and every decision has been complied with, although the Supreme Court and the States explicitly recognized that the court had no power whatever to enforce its decisions.

The obedience to these decisions resulted from the recognition of its impartial justice, the respect for the fairness of its justices, its codified procedure, and its adherence to a recognized code of laws. A Supreme Court of the world, operating in accordance with a recognized code of international laws and in adherence to a suitable system of procedure, having, because of its character and organization, the respect of the peoples of the world, can discharge just as effectively as our Supreme Court the duty of settling differences between sovereign bodies without impairing their sovereignty.

THE LONG ARM OF JUSTICE

As soon as the people of the world have attained a sufficiently high standard of international consciousness and the court has functioned with impartial justice and success, they may be willing to permit the court powers of coercion over individuals who attempt to bring about international disturbance in violation of recognized international laws. As our Supreme Court has powers of enforcing punishment on individuals who violate the supreme laws of the land, so a Supreme Court of the world may not only render decisions based upon justice, but may ultimately be endowed with "teeth" and enabled to put the fear of God into the hearts of individual violators of international law who attempt to lead nations to aggression; for they would know in advance that they could not escape the grasp of the long arm of

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justice, justice which would haul them before the bar of the Supreme Court of the world and hold them inexorably responsible in accordance with the supreme law.

"Experience is the oracle of truth; and where its responses are unequivocal they ought to be conclusive and sacred."—(*The Federalist*, Article XX.)

"The curiosity I had felt during my researches into the History of the most distinguished Confederacies, particularly those of antiquity, and the deficiency I found in the means of satisfying it more especially in what related to the process, the principles, the reasons, & the anticipations, which prevailed in the formation of them, determined me to preserve as far as I could an exact account of what might pass in the Convention whilst executing its trust, with the magnitude of which I was duly impressed, as I was with[a] the gratification promised to future curiosity by an authentic exhibition of the objects, the opinions, & the reasonings from which the new System of Govt. was to receive its peculiar structure & organization. Nor was I unaware of the value of such a contribution to the fund of materials for the History of a Constitution on which would be staked the happiness of a people great even in its infancy, and possibly the cause of Liberty throught the world."

James Madison in his preface to The Debates in the Federal Convention of 1787, which framed the Constitution of the United States of America (see International Edition, Hunt & Scott, Oxford University Press, page 14).

[a] The word "by" is substituted in the transcript for "with."

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